IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17..06..2005

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.P.No.12240 of 1994

1.G.Krishnan S/o Govindan
2. Kumutha W/o Krishnan
3. Pulliappan S/o Kandasamy
4. Anjalam W/o Pulliappan

..Petitioners.

Vs.

1.Union of India,
rep. by its Secretary to Government of India,
Law Department, New Delhi.
2. The Government of Tamil Nadu,
rep. by its Secretary, Law Department,
Fort St.George, Madras - 600 009.
3. Sub Inspector of Police,
Thalaivasal Police Station,
Salem District.
4. Chinna Ponnu W/o Angamuthu
Kattu Kottai, Attur Taluk,
Salem District.

..Respondents.

PRAYER: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of declaration.

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For Petitioners :: Mr.R.M.Krishna Raju

For Respondent - 1 :: Mr.S.Manikumar, SCGSC

For Respondents - 2 & 3 :: Mr.V.Raghupathi, Govt. Pleader

For Respondent - 4 :: No appearance

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O R D E R

THE HON'BLE THE CHIEF JUSTICE

By means of this writ petition, the petitioners have prayed for the issuance of a writ declaring Sections 3 and 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989) as ultra vires the Constitution.

2. We have heard learned counsel for the parties and have perused the record.

3. It is alleged in the writ petition that a false FIR has been lodged against the petitioners by respondent - 4, who belong to the Scheduled Caste Community, on the basis of which respondent - 3, the Sub Inspector of Police, Thalaivasal Police Station, Salem District has registered a criminal case under Sections 323/427 of the Indian Penal Code and Sections 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act). The petitioner applied for anticipatory bail under Section 438 of Cr.P.C. but that application was dismissed by the District and Sessions Judge, Salem as not maintainable on 06.07.1994, in view of Section 18 of the Act.

4. The English Translation of the FIR reads as follows:

> "Today i.e., 02.07.1994 at 2.30 pm one Mrs.Chinnaponnu, W/o Angamuthu residing at Anna Nagar, Kattukottai, Attur Taluk, Salem District appeared before the police station and made the following statement.
> Statement of Chinnaponnu aged 38 years W/o Angamuthu, Kattukoattai, Anna Nagar, Athur, Salem District.
>
> I am residing at Door No.5/57, Anna Nagar, Kattukoattai, Athur Taluk, Salem District for the past 14 years. I belong to Scheduled Caste Community (Paraiyar). On 28.06.1994 at about 8 am I went to fetch drinking water from the government borewell. That time my neighbour Krishnan, his wife Kumutha, Pulliappa Gounder and his wife Anjala abused and passed derogatory remarks against my caste by calling me as "para chakkalathi" (concubine), and further abused me saying why you alone belonging to Paraiyar Community are residing along with us when we Gounders are residing in this area. Go to your paraiyar street. They also threatened to manhandle me. I rushed to my house. Thereafter, they rushed to my house by breaking open the gate, and when my son Sakthivel objected, one Krishnan assaulted my son with sticks and stones. All of them went away after assaulting my son. One Swaminathan, son of one Pappathi and Nagalingam, wife of one Thangavelu know about the said incident. The above statement was read over and explained to me.

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After receiving the above statement, a case in Crime No.31/94 under Sections 427, 323 of IPC and Section 3 (1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered by Salem PCR Unit Police Station."

5. A perusal of the above FIR shows that on 28.06.1994 at about 8 am the first informant Mrs.Chinnaponnu went to fetch water from the common borewell. Petitioners met her and abused her calling "paraichee", which means a female member of the Scheduled Caste Community called "paraiyar". They also said that when we Gounder people are residing there, why was respondent no.4 of paraiyar community staying there. They also threatened to manhandle her. Therefore she returned to her house. On her return, they went to her home, and when her son objected, they beat him up with sticks and stones.

6. In this petition we are not concerned with the correctness or otherwise of the allegations in the FIR as that question will be decided in the trial by the criminal Court. We are only concerned with the validity of Sections 3 and 18 of the Act.

7. As regard the validity of Section 18 of the Act, that has already been upheld by the Supreme Court in State of M.P. and Another Vs. Ram Krishna Balothia and Another, AIR 1995 SC 1198. We may therefore consider the validity of Section 3 of the Act.

8. Section 3(1) of the Act states:-

"3. Punishments for offences of atrocities:- (1) Whoever, not being a member of a Scheduled Caste or Scheduled Tribe, -

(i) forces a members of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;

(ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

(iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;

(iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

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(vi) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do "begar" or other similar forms of forced or bonded labour other than any compulsory service for public purpose imposed by Government;

(vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;

(viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(ix) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;

(xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;

(xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;

(xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extent to five years and with fine."

9. In our opinion, there is nothing unconstitutional in Section 3 of the Act. It is the constitutional obligation of the State to protect the interests of the Scheduled Castes and Scheduled Tribes from social injustice. The object of the Act is to prevent atrocities against the members of the Scheduled Castes and Scheduled Tribes, who have been oppressed and downtrodden for thousands of years in our country. Oppression, atrocities, and humiliation of the Scheduled Castes and Scheduled Tribes is a shameful chapter in our country's

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history. For thousands of years the Scheduled Castes and Scheduled Tribes in our country have been humiliated, insulted and looked down upon. In fact, even today the so-called upper castes and even O.B.Cs. often look down and insult the members of the Scheduled Castes and Scheduled Tribes. This can no longer be tolerated in this modern age of democracy. In the modern age, equality is one of the basic features which characterises this era. Today no people and no community will tolerate being treated as inferior and will oppose such ill-treatment, and will be justified in doing so. The truth is that even today, in many parts of our country Scheduled Castes and Scheduled Tribes are oppressed and humiliated and violence is committed on them. For instance, in many parts in western districts of Uttar Pradesh (e.g. Meerut, Moradabad, Muzaffarnagar, etc.) if a Scheduled Caste boy falls in love and marries (or wants to marry) a non-Scheduled Caste girl, it often happens that both are murdered by members of the non-Scheduled Caste Community or the family members of the girl, and this is called "honour killing". In fact, there is nothing honourable in this, and this is an abominable, disgraceful and shocking practice which must be suppressed by the State. One of us (M.Katju, C.J.) while a Judge of the Allahabad High Court has given many such directions for stamping out this shameful, cruel and barbaric practice, but it still continues.

10. We have already mentioned that this is the modern age of equality, which is also provided for in our Constitution, vide Articles 14 to 18, 38(2) and 46. Inequality can be created/perpetuated not only by treating equals as unequals, but also by treating unequals as equals. The Scheduled Castes and Tribes are certainly not treated as equals by the so-called upper castes or even backward castes in our country, but are even today looked down upon and insulted and humiliated. For instance, in the 'Hindu' newspaper of 17.06.2005 it has been reported in the front page that in Salem District there is prevalent a 'double tumbler' system of serving tea at tea stalls, dalits and non-dalits being served in separate tumblers. This is shocking, and is not acceptable in the modern era, and unless this attitude changes our country will remain divided and its progress obstructed. The authorities must therefore come down with a heavy hand on these detestable feudal practices which have disgraced our nation.

11. Since, Scheduled Castes and Schedules Tribes have been historically oppressed and downtrodden, our founding fathers who drafted the Constitution realised in their wisdom that compensatory State action is required to enable these oppressed and weaker sections to come up to the level of others, so that there may be real equality. It is with this object that special provisions have been made for Scheduled Castes and Scheduled Tribes in Articles 15(4), 16 (4),16(4-A) and 46, for women and children under Article 15(3) of the Indian Constitution, etc.

12. Thus, Article 46 of the Constitution states:-

> "The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

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13. No doubt the above provision is in the Directive Principles of State Policy, but it is now well settled that the fundamental rights and directive principles have to be read together, since it has been mentioned in Article 37 that the principles laid down in the Directive Principles are fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws. The Directive Principles embody the aim and object of the State under a Republican Constitution, e.g., that it is a welfare State and not a mere police State, vide Kesavananda Bharati Vs. State of Kerala, (1973) 4 SCC 225 (vide paragraphs – 134, 139 and 1714) and embodies the ideal of socio-economic justice, vide Union of India Vs. Hindustan Development Corporation, AIR 1994 SC 988 (990).

14. Though the early decisions of the Supreme Court paid comparatively scant attention to the Directive Principles in Part – IV of the Constitution as they were said to be non-justiciable and non-enforceable in the Courts (vide Article 37), the subsequent decisions of the Supreme Court changed this trend and this new trend reached its culmination in the 13 member bench Judgment of the Supreme Court in Kesavananda Bharati's Case (Supra), which laid down that there is no disharmony between the directive principles and fundamental rights because they supplement each other in aiming at the same goal of bringing about a social revolution and the establishment of a welfare State, which is envisaged in the Preamble to the Constitution. The Constitution aims at a synthesis of the two, and the Directive Principles constitute " the conscience of the Constitution". Together they form the core of the Constitution, vide Markandeya, V. Vs. State of A.P., AIR 1989 SC 1308 (paragraph – 9). They are not exclusionary, but are complementary to each other, vide Unnikrishnan, J.P. Vs. State of A.P., AIR 1993 SC 2178. It follows therefore that the courts should uphold, as far as possible, legislation enacted by the State which seeks to remove inequalities and attain 'distributive justice', vide, Lingappa Pochanna Appealwar Vs. State of Maharashtra, AIR 1985 SC 389 (paragraphs 16 and 20), Manchegowda Vs. State of Karnataka,AIR 1984 SC 1151, Fateh Chand Himmatlal Vs. State of Maharashtra, AIR 1977 SC 1825, etc., In recent decisions the Supreme Court has been issuing various directions to the Government and administrative authorities to take positive action to remove the grievances which have been caused by non-implementation of the Directive Principles, vide Comptroller and Auditor General of India Vs. Jagannathan, AIR 1987 SC 537 (paragraphs 20-21), Mukesh Advani Vs. State of M.P., AIR 1985 SC 1363, Bandhua Mukti Morcha Vs. Union of India, AIR 1984 SC 802, etc.

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15. Apart from Article – 46 of the Constitution, we may also refer to Article 38(2) of the Constitution.

Article 38(2) states:-

> "The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inqualities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people

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residing in different areas or engaged in different vocations."

16. A law invalidating transfers of land belonging to a member of a Scheduled Tribe to a non-tribal and for restoration of such land to the transferor was held to be constitutionally valid as it was for implementation of Article 46 of the Constitution, vide R.Chandevarappa Vs. State of Karnataka, (1995) 6 SCC 309 (paragraphs – 6,9 and 10), Papaiah Vs. State of Karnataka, (1996) 10 SCC 533 (paragraphs 8 and 10), etc.

17. In the present case, it is alleged that the petitioners insulted the first informant by calling her "paraichee". In the State of Tamil Nadu "paraiyar" is the name of one of the Scheduled Castes and "paraichee" means a female member of that caste. No doubt the word "paraiyar" is the name of one of the Scheduled Castes, but it is also a word used in a derogatory sense. For instance, in North India the word "chamar" is the name of one of the Scheduled Castes, but it is also a word used in the derogatory sense for insulting somebody. In the modern age, nobody should be insulted and nobody's feeling should be hurt. Hence, one of us (M.Katju, C.J.) while a Judge of the Allahabad held in one of his judgments, Shanker Vs. State of U.P., 2001 A.L.J. 820, that the use of the word "chamar" will amount to an offence under Section 3(1)(x) of the Act, as it amounts to an insult to a member of the Scheduled Caste Community, though it is true that "chamar" is also the name of one of the castes in the Scheduled Caste Community. Hence, the members of the so-called upper caste or O.B.C. or other non S.C./S.T. should not use this word while addressing a member of the "chamar" caste because it is often used in a derogatory sense and is likely to hurt the feelings of a person belonging to the "chamar" caste. The Court observed:-

> "A perusal of the F.I.R. shows that the allegations are that certain Yadavs and Brahmins misbehaved with a Harijan lady and beat up and insulted her calling her 'chamar'. No doubt the word 'chamar' is a word denoting a certain caste, but the said word is also used in a derogatory sense for persons who are regarded as inferior by the so-called upper castes. In the opinion of the Court since the word 'chamar' is used in a derogatory sense, it should not be used by members of the so-called upper castes or O.B.Cs. as it hurts the feeling of Harijans. In our country, nobody's feelings should be hurt and no one should be treated as inferior. This is the modern age of democracy in which equality is a fundamental principle which must be cherished by all. Thus, whoever regard themselves as superior merely because they happen to belong to the so-called upper castes are feudal minded, backward persons whose mentality must be opposed by persons with modern mentality. On the facts of the present case the Court is not inclined to quash the impugned F.I.R."

18. Similarly, the word "paraiyan" and "paraichee" should not be used by non S.C./S.T. members while addressing a member of the

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"paraiyar" caste, because it would hurt the feelings of a member of that caste, even though it may be true that the person in fact belongs to that caste. In a democracy nobody's feelings should be hurt. We are living in a democracy, and in a democracy all people and all communities are equal.

19. If our country is to remain united and prosper, we must all respect each other and nobody should be insulted or humiliated. It is with this object that Section 3 of the Act was enacted and we see nothing un-constitutional in it as it is in accordance with the Constitutional philosophy as embodied in various provisions of the Constitution including Article 46. It is also in accordance with Article 21 of the Constitution which has been interpreted by the Supreme Court to envisage a life of dignity as a fundamental right.

20. In our opinion the impugned law makes a "protective discrimination" in favour of Scheduled Castes and Scheduled Tribes which is part of the constitutional scheme of social and economic justice to integrate them into the national mainstream and ensure dignified life to the Scheduled Castes and Scheduled Tribes, vide Ashok Kumar Gupta Vs. State of U.P., (1997) 5 SCC 201 (paragraph-46), Jagdish Lal Vs. State of Haryana, (1997) 6 SCC 538 (paragraph -17), P.G.I. of Medical Education and Research Vs. K.L.Narasimhan, (1997) 6 SCC 283 (paragraph-22), State of U.P. Vs. Dr.Dina Nath Shukla, (1997) 9 SCC 662 (paragraph-7), etc.

21.Thus, in Jagdish Lal Vs. State of Haryana, (1997) 6 SCC 538 the Supreme Court observed "protective discrimination itself is a facet of Article 14 of the Constitution".

22. Similarly, in P.G.I. of Medical Education and Research Vs. K.L.Narasimhan, (1997) 6 SCC 283 the Supreme Court observed:-

> "Where, therefore, there is inequality, in fact, legal equality always tends to accentuate it. What the famous poet William Blake said graphically is very true, namely, 'One law for the Lion and the Ox is oppression'. Those who are unequal, in fact, cannot be treated by identical standards; that may be equality in law but it would certainly not be real equality. It is, therefore, necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring about real equality. Such affirmative action though apparently discriminatory is calculated to produce equality on a broader basis by eliminating de facto inequalities and placing the weaker sections of the community on a footing of equality with the stronger and more powerful sections so that each member of the community, whatever is his birth, occupation or social position may enjoy equal opportunity of using to the full his natural

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natural endowments of physique, of character and of intelligence".

23. Similarly, in St. Stephen's College Vs. University of Delhi, (1992) 1 SCC 558 the Supreme Court observed:-

"To treat unequals differently according to their inequality is not only permitted but required".

24. Such an affirmative action though apparently discriminatory is calculated to produce equality on a broader basis by eliminating de facto inequalities and placing the weaker section of the community on a footing of equality with the more powerful sections so that each member of the community may enjoy equal opportunity of using to the full his natural endowments, vide Indra Sawhney Vs. Union of India, AIR 1993 SC (paragraphs 4, 365, and 397).

25. Before parting with the case we would like to say that the caste system is a curse in our society and the sooner it is destroyed the better. The caste system is an outdated feudal institution which has weakened our country because it disunites us. Hence, the sooner it is done away with the better, so that India emerges as a modern, powerful, industrial State. It is totally out of place in the modern era.

26. With the above observations, the writ petition is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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Copy to:-

1.The Secretary to Government of India,
Law Department, New Delhi.

2. The Secretary,
The Government of Tamil Nadu,
Law Department,
Fort St. George, Madras - 600 009.

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3. Sub Inspector of Police,
Thalaivasal Police Station,
Salem District.

1 cc to Mr.R.M. Krishna Raju, Advocate, SR. 24492

1 cc to Mr.S.Manikumar, SCGSC SR. 24597

1 cc to the Govt. Pleader, High Court, Madras. SR. 24679

W.P.No.12240 of 1994

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